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UNITED STATES BANKRUPTCY COURT
U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA
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U.S. BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

IN RE:

Fred A. Basnight and Bertha M. Basnight,

Debtor.

C/A No. 99-09714-W

ORDER

Chapter 13

ENTERED

APR 19 2002

S.R.P.

THIS MATTER comes before the Court upon a Motion to Reinstate Stay filed on March 26, 2002 by Fred A. Basnight and Bertha M. Basnight ("Debtors"). Debtors seek to vacate the Court's Order of March 8, 2002 that granted relief from the automatic stay pursuant to 11 U.S.C. §362 to Fairbank Capital Corp. as servicer for CitiFinancial Mortgage Company f/k/a IMC Mortgage Company ("Creditor"). Relief from Stay was granted as a result of Debtors' failure to comply with payment requirements set forth in a Settlement Order between Debtors and Creditor entered on September 26, 2001.

Debtors state that the prior Settlement Order and Order Granting Relief from Stay were correct and proper but allege that a change in circumstances due to an unanticipated cutback in work hours is grounds to allow the Court to vacate the March 8, 2002 Order. Debtors also indicate that Creditor does not agree with the Motion to Reconsider, yet Creditor did not file an objection. At the hearing, the Chapter 13 Trustee questioned whether Debtors should be allowed a further opportunity, their third, to catch up their mortgage delinquencies.

The Court first notes that Debtors have benefitted from the automatic stay and have confirmed a Chapter 13 plan that requires the timely payment of mortgage payments. Upon failing to make regular mortgage payments, Debtors were faced with Creditor's Motion for Relief from Stay. To resolve the motion, Debtors voluntarily entered into the Settlement Order

that gives them a further opportunity to cure their postpetition defaults and in which they agree to make future payments when due. According to the Settlement Order, Debtors have a grace period of twenty days after default to cure delinquencies before relief from stay would be ordered. After the entry of the Settlement Order, Debtors failed to make their payments, and relief from stay was ordered.

While it is unfortunate that Debtors' change in work hours may have caused their failure to comply with the terms of their Settlement Order, this Court believes such orders, when properly entered and correct, must be respected and enforced; moreover, the Court believes these orders are not easily vacated. The dependability and enforceability of these orders are reasons why secured creditors routinely agree in this district to give debtors a further opportunity to catch up postpetition delinquencies in payments required by a debtor's plan instead of insisting on relief from stay. Further, even after relief from stay is granted, upon the consent of the secured creditor, this Court will authorize the Chapter 13 Trustee to resume plan payments to such a creditor to cure a prepetition mortgage arrearage and thereby encourage a debtor's continued performance under a confirmed plan. However, when the secured creditor does not agree to forbear and a debtor cannot demonstrate grounds pursuant to *Federal Rule 60 of Civil Procedure* to obtain relief from a judgment, this Court is not inclined to reconsider and vacate such a relief from stay order.¹ A debtor bears a demanding burden to invoke the equitable authorities of this Court to obtain additional chances to perform when the secured creditor is unwilling to agree to such an arrangement and the debtor has not performed according to the terms of prior express

¹ Debtors' Motion to Reconsider was filed on March 26, 2002 and therefore was filed more than ten days after the Order Granting Relief from Stay was entered on March 8, 2002. The Motion is therefore to be treated under Fed. R. Civ. P. 60 and not Fed. R. Civ. P. 59.

agreements he or she entered with that creditor.

Debtors further argue that there is equity above Creditor's lien that should serve as grounds for reconsideration. However, the existence of equity was known or should have been known to Debtors at the time they entered into the Settlement Order. In the instant case, Debtors did not offer sufficient evidence to meet the requirements of Fed. R. Civ. P. 60; therefore, the Court denies Debtors' Motion to Reconsider.²

AND IT IS SO ORDERED.

Columbia, South Carolina,
April 17, 2002.


UNITED STATES BANKRUPTCY JUDGE

² After the Court ruled in this matter, Debtors' counsel asked that Debtors be allowed to testify concerning their Motion. However, it is simply too late to offer further evidence after the Court has made its ruling.

CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States
Bankruptcy Court for the District of South Carolina hereby certifies
that a copy of the document on which this stamp appears
was mailed on the date listed below to: *(BNC)*

APR 19 2002

✓
DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE ✓

SHEREE R. PHIPPS

Deputy Clerk

✓ *Bresner*